fixed point in the progress of the case has been reached, it is still possible for the court in its discretion to allow the plaintiff to withdraw. *Ashmead* v. *Ashmead,* 23 Kan. 262; *McQuesten* v. *Commonwealth, supra; Bee Building Co.* v. *Dalton,* 68 Neb. 38. Other cases seem to ignore the line of distinction between absolute right and discretionary right, here suggested, and would make it in all cases a matter of discretion with the trial court. *In Matter Waverly Water Works,* 85 N. Y. 478; *Island Realty Co.* v. *U. S.,* 209 Fed. 201. But if the defendant is not prejudiced there is no need for discretion and the plaintiff may voluntarily dismiss. *Andrews* v. *French,* 17 N. M. 615. It is often said that a plaintiff has an absolute right to dismiss his action where there exists no special reason why the dismissal should not be granted. *Deere & Webber Co.* v. *Hinckley,* 20 S. D. 359. This and the discretion rule are too general, as it too frequently requires the final word of an appellate court to determine whether the discretion has been properly exercised, or whether or not special reasons exist. See *Lane* v. *Morton,* 81 N. C. 38; *Stevens* v. *The Railroads,* 4 Fed. 97; *Palmer* v. *D., L. & W. R. R.,* 222 Fed. 461; *Palmedo* v. *Walton Reporter Co.,* 183 N. Y. S. 365. The use of conditional orders of dismissal in such cases is common. *American Steel and Wire Co.* v. *Mayer & Englund Co.,* 123 Fed. 204. The principal case holds that a final decision on the merits had been reached, which precluded dismissal as of right, and that ordinarily, when all the evidence has been submitted, a dismissal will not be allowed. On the latter point, compare *Levy* v. *Insurance Co.,* 159 N. Y. S. 902, which ruled to the contrary on the same state of facts.

TRUSTS—IS THE CESTUI'S RIGHT IN REM OR IN PERSONAM?—The Vermont tax appraisers levied a tax upon the cestui's interest in a trust estate consisting of certain securities. The cestui was a resident of Vermont and the trustee was a non-resident. The levy was protested on the ground that the cestui had no property within the state subject to taxation. *Held,* the equitable interest of the cestui is property which the legislature may subject to taxation. *City of St. Albans* v. *Avery* (Vt., 1921), 114 Atl. 31.

The liability of a resident cestui to property taxation on the theory that he has a property interest within the state, even though the trustee is a non-resident, is apparently fairly well settled. In *Hunt* v. *Perry,* 165 Mass. 287, the court sustained a law imposing a personal property tax upon him. In *Maguire* v. *Tax Commissioner,* 230 Mass. 503, affirmed in 253 U. S. 12, he was subjected to a state income tax upon income derived from property held in trust by a non-resident trustee. These decisions are predicated on the theory that the cestui has a property interest in the trust estate in addition to the usual personal rights against the trustee. The interesting feature of the decision in the principal case is the unequivocal language with which the Vermont court repudiates the historic doctrine that the cestui's interest is merely *in personam.* It says: "The beneficiaries are the substantial owners of the trust fund. They have the power to control absolutely the character of the securities comprising the fund and to terminate it at will. They actually owned the securities yesterday, so to speak, and may tomorrow if they so elect. * * * To say that, possessed of the interests and rights which

they have under the arrangement, they have no property, is absurd." The essence of rights *in rem* is generality of claim against all the world; that of rights *in personam* is restriction of claim to a definite promisor. In the early days of uses the cestui's rights were purely *in personam*. However, they gradually expanded under the protection of the courts of chancery until in chronological succession the cestui acquired rights against purchasers with notice, the heirs of the trustee, the dower rights of the trustee's wife, and the trustee's creditors. This development would, without doubt, have gone on more rapidly, and would have been carried still further, had it not been for Lord Coke's jealousy for the common law and his antagonism to any extension of the powers of the courts of chancery. In his own words, "a use is only a trust or confidence reposed in some other which is not issuing out of the land but is a thing collateral, annexed in privity to the estate of the land and to the person touching the land. It is neither a *jus in re* nor a *jus ad rem*." Both courts and text-writers have submitted to a greater or less extent to his legalistic reasoning, and even at the present day certain doctrines of trust law are predicated upon it. For instance, if the trustee is barred by the Statute of Limitations from an action against one who interferes with the trust estate, the cestui is likewise barred, even though he be under a disability which would ordinarily toll the statute in his favor. *Lewellin* v. *Mackworth*, 2 Eq. Cas. Abr. 579; *Wych* v. *East India Co.*, 3 P. Wms. 309. If he were regarded as having an interest *in rem* in the trust estate, the statute would not bar his remedy. Again, the cestui has no direct remedy against the disseisor or converter of the trust estate. He must proceed in equity to compel the trustee to take the necessary action. *Hall* v. *Waterman*, 220 Ill. 569. But the present tendency of the law is clearly toward recognizing the cestui's right as a composite of *in personam* rights against the trustee and *in rem* rights against all the world. See HUSTON, ENFORCEMENT OF DECREES IN EQUITY, Ch. 6, and 17 COL. L. R. 269 for thorough discussions of the subject. The principal case and others of its kind are good illustrations of the modern trend of thought and of its application in trust law.

TRUSTS—PAROL TRUST IN LANDS—STATUTE OF FRAUDS—SUBSEQUENT ADMISSIONS IN COURT BY TRUSTEE.—The defendant was the grantee of lands by a deed absolute upon its face. The wife of the deceased grantor and the guardian of his minor son brought a petition to have the deed set aside on the ground that it was induced by the fraudulent representation that the conveyance was necessary to save the property. The defendant's answer denied the fraud and claimed absolute title in fee to the property. In open court, however, the defendant stated, and her position was explained and endorsed by her attorney, that she did not claim the property for herself, but held it in trust for the wife and child of the grantor, and asked that a trustee be appointed to carry out the trust. *Held*, that a trustee should be appointed to enforce the trust according to the defendant's evidence. *Brender* v. *Stratton* (Mich., 1921), 184 N. W. 486.

It has been regarded as objectionable that the grantee should be permitted to establish a trust in the same action in which the petitioner seeks to set